

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

TRAVELERS CASUALTY AND
SURETY COMPANY,

Appellant,

v.

PACIFIC GAS AND ELECTRIC
COMPANY,

Appellee.

No. 04-15605

D.C. No. CV-03-03499-PJH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Argued and Submitted October 17, 2005
San Francisco, California

Before: REINHARDT and THOMAS, Circuit Judges, and RESTANI^{**}, Chief
Judge, Court of International Trade.

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The Honorable Jane A. Restani, Judge, United States Court of
International Trade, sitting by designation.

Travelers Casualty and Surety Company (“Travelers”) appeals the judgment of the district court affirming the bankruptcy court’s denial of attorney fees. We affirm. Because the parties are familiar with the factual and procedural history of the case, we will not recount it here.

Travelers argues that *Fobian v. Western Farm Credit Bank (In re Fobian)*, 951 F.3d 1149 (9th Cir. 1991), does not control this case and that *Fobian* was incorrectly decided. This appeal raises substantially the same issues as *DeRoche v. Arizona Industrial Commission (In re DeRoche)*, ___ F.3d ___, 2006 WL 91470 (9th Cir. January 17, 2006). For the reasons set forth in our opinion in *DeRoche*, Travelers’ argument fails.

Travelers’ argument is weaker than the argument asserted in *DeRoche*. Travelers is attempting to recover fees in bankruptcy for objections to proposed reorganization plans and related bankruptcy proceedings. Travelers’ objection to the reorganization plan arose under 11 U.S.C. § 1125, and claimed only that the debtor failed to provide the required “adequate information” about the reorganization plan. Specifically, Travelers sought some assurance that its subrogation rights were being rendered unimpaired under 11 U.S.C. § 509(a). Nothing in the federal bankruptcy proceedings required Travelers to satisfy any of the obligations assured by, or to make any payment with respect to, any of its

surety bonds or indemnity agreement with the debtor. Travelers did not prevail on any claim it asserted in the bankruptcy proceedings.

"[A] prevailing party in a bankruptcy proceeding may be entitled to an award of attorney fees in accordance with applicable state law if state law governs the substantive issues raised in the proceedings." *Ford v. Baroff (In re Baroff)*, 105 F.3d 439, 441 (9th Cir. 1997). However, attorney fees are not recoverable in bankruptcy for litigating issues "peculiar to federal bankruptcy law." *Fobian*, 951 F.3d at 1153.

The resolution of all of these proceedings was governed entirely by federal bankruptcy law. Both the bankruptcy court and the district court correctly denied Travelers' claim for attorney fees. Indeed, if unimpaired, non-prevailing creditors were authorized to obtain an attorney fee award in bankruptcy for inquiring about the status of unimpaired inchoate and contingent claims, the system would likely be overwhelmed by fee applications, with no funds available for disbursement to impaired creditors or debtor reorganization.

AFFIRMED.